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ELAINE GAY CHOW SONG & ANOR v. SURUHANJAYA SYARIKAT MALAYSIA & ORS

HIGH COURT MALAYA, KUALA LUMPUR
MOHD ARIEF EMRAN J
[CIVIL SUIT NO: WA-22NCC-523-10-2022]
29 NOVEMBER 2024

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Abstract – *The court has a proactive duty to identify and isolate specific questions of law or facts that can be determined before a full trial to ensure judicial economy and efficiency. The exercise of powers under O. 33 r. 2 of the Rules of Court 2012, specifically directing parties to address the impact of prior superior court decisions, is a legitimate discharge of judicial function and does not constitute a 'predetermination' of the case. A judge's attempt to expedite proceedings or focus legal arguments on critical issues does not provide a basis for recusal. The mere fact that a judge identifies legal hurdles or sets a specific sequence for hearings does not satisfy the 'real danger of bias' test.*

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CIVIL PROCEDURE: *Recusal – Application for – Allegation of real danger of bias – High Court Judge directed preliminary issues of law to be addressed under O. 33 r. 2 of Rules of Court 2012 – Duty of court to ensure efficient and economical disposal of proceedings – Whether such direction amounted to pre-judgment of case – Whether court's attempt to identify and isolate central issues based on previous Federal Court decisions constituted bias – Whether litigant's dissatisfaction with case management directions ground for recusal*

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CIVIL PROCEDURE: *Case management – Powers of court – Judicial control over proceedings – Court directing parties to file submissions on impact of earlier superior court rulings – Whether court entitled to identify crucial issues for determination before trial – Whether parties bound to comply with court's directions on sequence of hearings – Rules of Court 2012, O. 33 r. 2*

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The current suit followed a series of extensive legal battles that have reached the Federal Court. In 2013, the Federal Court addressed a claim by the late Kwan Chee Hang that 80,000 shares in Zung Zang Holdings were fraudulently transferred from Zung Zang Trading Sdn Bhd into the names of the current plaintiffs ('Federal Court 1 decision'). The Federal Court ordered that the shareholdings be restored to their original positions and that the company registers be rectified accordingly. Following the Federal Court 1 decision, the plaintiffs allegedly attempted to wind up related entities, ZZ Plantation Sdn Bhd and Ganright Enterprise. They subsequently sought to wind up the third defendant. Although initially allowed by the High Court, this winding-up order was set aside by the Court of Appeal. A separate suit

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was instituted in the Sandakan High Court between the second defendant and the plaintiffs. This action sought the return of company records, *ie*, minute books, seals, accounting files, and moveable properties, as well as an injunction to prevent the plaintiffs from interfering with business operations or acting as directors. This matter led to a second Federal Court ruling ('Federal Court 2 decision'). The Federal Court held that the appointment of the late Kwan Huang Cheng as the corporate representative for the second defendant was valid and he was authorised to act on the 80,000 shares held by the second defendant in the third defendant, which included the authority to call meetings and vote. Despite the decisions of the superior courts above, the plaintiffs now claimed that: (i) the 80,000 shares in the third defendant were owned by the plaintiffs despite the decision by the superior courts declaring that the transfer of the said shares into their names was fraudulently undertaken; (ii) the first defendant had wrongly caused the transfer of the said 80,000 shares into the name of the second defendant; (iii) the said transfer of 80,000 shares in the third defendant from the plaintiffs into the second defendant's name was fraudulently undertaken in 2015; (iv) the plaintiffs were both unlawfully removed as directors of the company; (v) the new directors in the third defendant were unlawfully appointed; and (vi) the company secretary of the third defendant was unlawfully appointed. After reviewing the pleadings and trial documents, the court determined that specific questions of law should be addressed before the trial proceeds to ensure efficiency and economy. Exercising its powers under O. 33 r. 2 of the Rules of Court 2012 ('ROC'), the court directed counsel to provide written submissions on these questions rather than proceeding immediately to witness testimony. The most pressing legal issue identified by the court was the impact of previous decisions from the Federal Court and Court of Appeal. The court sought to determine if these superior courts had already made a final determination regarding the ownership of the 80,000 shares currently claimed by the plaintiffs. While the defendants filed their written submissions as directed, the plaintiffs refused to do so, instead filing this application to recuse this court based on the grounds that this court: (i) made an order or direction, under O. 33 r. 2 of the ROC directing that the above issues be addressed; (ii) had prejudged the issues in the present case; (iii) failed to allow the stay of the proceedings as requested by the plaintiffs pending the outcome of the application to disqualify the solicitors acting for the second and third defendants; and (iv) refused to agree with the plaintiffs' counsel request on the sequence of hearings of applications filed before this court.

Held (dismissing applications):

(1) The mere fact that this court had identified issues of law that should be addressed by the litigants did not mean that the court had made up its mind. This court was duty-bound to read the pleadings, documents and consider the applicable laws. The issues identified should then be

A brought to the attention of counsel for them to suggest solutions or even suggest that these issues be determined after the witnesses were heard and subject to cross-examination. The function of a judge is not like that of monastic monks. Judges cannot let the proceedings be controlled solely on the whims and fancies of the litigants. Judges are duty-bound
B to read the pleadings, the documents, submissions and in some instances highlight issues that should be addressed by counsel. After all, those powers had been provided to the court, under O. 33 r. 2 of the ROC. (para 38)

(2) There was no reason for this court to recuse itself and not hear this suit.
C The issues of law identified earlier were only to ensure that questions of laws that arose from the plaintiffs' statement of claim were addressed first before the trial was heard. The court was deeply concerned as to the impact the two Federal Court decisions would have on the merits of this case. This was the most important issue that must first be addressed.
D That question was a matter solely based on the interpretation of the decision of the Federal Court and could be addressed by counsel in their written submissions. (paras 46-48)

(3) On the issue of the stay of proceedings sought by the plaintiffs based on the application to discharge the solicitors for the second and third
E defendants, it would be wrong to grant the said application until the said second and third defendants presented their version of events to this court. The court had not made up its mind as to whether a stay of proceedings should be granted. The court could not and should not agree to the plaintiffs' request or application until the said defendants were
F given the right to be heard. The defendants had a right to explain their position. (paras 51 & 52)

(4) The actions of the plaintiffs' solicitors appeared inconsistent. While their submissions repeatedly emphasised that they were not afforded a fair opportunity to bring this matter to trial, this court's intention had
G been solely to expedite the proceedings. To that end, the court requested parties to file written submissions addressing the issues, under O. 33 of the ROC. However, rather than complying with this directive, the plaintiffs have yet to file their submission and instead chose, at the eleventh hour, to challenge the appointment of Messrs Fahri Azzat
H & Co and seek a stay of proceedings. The plaintiffs should have filed their written submissions on the issues posed by this court, and this would have resolved the issues in an efficient and expedited manner. These applications to recuse this court and to stay the proceedings were without basis and would only cause unnecessary delay and expense.
I (paras 57 & 65)

Case(s) referred to:

Abdul Mohd Khalid Hj Ali & Ors v. Dato Hj Mustafa Kamal & Anor [2003] 5 CLJ 85 HC ***(refd)***

Allen v. Gulf Oil Refining Ltd [1981] 1 All ER 353 ***(refd)***

Arab Malaysian Finance Bhd v. Meridian International Credit Corporation Ltd London [1993] 4 CLJ 307 SC ***(refd)***

Ashmore v. Corp Of Lloyd's [1992] 2 All ER 486 ***(refd)***

Badiaddin Mohd Mahidin & Anor v. Arab Malaysian Finance Bhd [1998] 2 CLJ 75 FC ***(refd)***

BOI v. BOJ [2018] SGCA 61 ***(refd)***

Bubbles & Wine Limited v. Reshat Lusha [2018] EWCA Civ 468 ***(refd)***

Hai Yue Hin v. Public Feedmill (M) Sdn Bhd [1997] 4 CLJ 555 CA ***(refd)***

Hiap Soon Hong Sdn Bhd v. Leopad Assets Sdn Bhd [2018] CLJU 664; [2018] 1 LNS 664 CA ***(refd)***

Hock Hua Bank Bhd (Sabah) Bhd v. Yong Liuk Thin & Ors [1995] 2 CLJ 900 CA ***(refd)***

Karen Yap Chew Ling v. Binary Group Services Bhd & Another Appeal [2023] 7 CLJ 534 CA ***(refd)***

Kwan Chee Hang Sdn Bhd & Ors v. Zung Zang Wood Products Sdn Bhd & Ors And Other Cases [2011] CLJU 1838; [2011] 1 LNS 1838 HC ***(refd)***

Locabail (UK) Ltd v. Bayfield Properties Ltd & Anor [2000] 1 All ER 65 ***(refd)***

Low Cheng Teik & Ors v. Low Ean Nee [2024] 9 CLJ 171 FC ***(refd)***

Messrs KK Lim & Associates lwn. OCBC Bank (Malaysia) Bhd [2023] 8 CLJ 389 CA ***(refd)***

Mohamed Ezam Mohd Nor & Ors v. Ketua Polis Negara [2001] 4 CLJ 701 FC ***(refd)***

Newacres Sdn Bhd v. Sri Alam Sdn Bhd [2000] 2 CLJ 833 FC ***(refd)***

Petroleum Nasional Bhd v. Kerajaan Negeri Terengganu & Another Appeal [2003] 4 CLJ 337 CA ***(refd)***

Prometheus Marine Pte Ltd v. Anna Rita King [2017] SGCA 61 ***(refd)***

Residence Hotel And Resorts Sdn Bhd v. Seri Pacific Corp Sdn Bhd [2014] 10 MLJ 413 ***(refd)***

Tan Geok Lan v. La Kuan [2004] 2 CLJ 301 FC ***(refd)***

Tilling v. Whiteman [1980] AC 1 ***(refd)***

Vakauta v. Kelly [1989] 87 ALR 633 ***(refd)***

Zung Zang Holdings Sdn Bhd v. Zung Zang Trading Sdn Bhd [2019] CLJU 2272; [2019] 1 LNS 2272 CA ***(refd)***

Zung Zang Trading Sdn Bhd v. Kwan Hung Cheong & Anor [2021] 5 CLJ 433 FC ***(refd)***

Zung Zang Wood Products Sdn Bhd & Ors v. Kwan Chee Hang Sdn Bhd & Ors [2012] CLJU 250; [2012] 1 LNS 250 CA ***(refd)***

Zung Zang Wood Products Sdn Bhd & Ors v. Kwan Chee Hang Sdn Bhd & Ors [2014] 2 CLJ 445 FC ***(refd)***

Legislation referred to:

Companies Act 1965, ss. 147(6), 152(A), 162
Companies Act 2016, s. 347
Rules of Court 2012, O. 33 r. 2

For the plaintiffs - Cheryl Kwan Chui Yi; M/s Rosley Zechariah
For the 1st defendant - Lidia Fyrulliza Ishak & Muhammad Amir Basaruddin; Companies Commission of Malaysia

For the 2nd & 3rd defendants - Fahri Azzat & Muhammad Firdaus; M/s Fahri, Azzat & Co
For the 4th defendant - Kasthuri Krishnan; M/s Kasthuri Basir Shah & Partners

Reported by Lina E

JUDGMENT

Mohd Arief Emran J:

Introduction

[1] The plaintiffs seek to recuse this court from further hearing the dispute between the litigants on the alleged ground of bias. This appears in encl. 210 filed by the plaintiffs. This application is opposed by the defendants.

Brief Facts – History Of The Suits Between Parties

[2] The dispute that arises within the family of the late Kwan Chee Hang has not been resolved despite the decision of the Federal Court in the civil appeals bearing number 02-50-07-2012(S) and 02-51-07-2012(S) that were delivered on 7 October 2013.

[3] The suit before the Federal Court concerns, *inter alia*, the claim by the late Kwan Chee Hang and the related plaintiffs in those suits, that the 80,000 shares in the third defendant, Zung Zang Holdings Sdn Bhd, were fraudulently transferred from Zung Zang Trading Sdn Bhd into the name of the plaintiffs in this suit.

[4] The facts of that case can be found in the judgment of Lee Heng Cheong J in *Kwan Chee Hang Sdn Bhd & Ors v. Zung Zang Wood Products Sdn Bhd & Ors And Other Cases* [2011] CLJU 1838; [2011] 1 LNS 1838 the Court of Appeal in *Zung Zang Wood Products Sdn Bhd & Ors v. Kwan Chee Hang Sdn Bhd & Ors* [2012] CLJU 250; [2012] 1 LNS 250 and the Federal Court in *Zung Zang Wood Products Sdn Bhd & Ors v. Kwan Chee Hang Sdn Bhd & Ors* [2014] 2 CLJ 445.

[5] It is important to note that the plaintiffs in the earlier suit, including the late father, claimed that the transfer of 80,000 shares of Zung Zang Holdings Sdn Bhd undertaken pursuant to the resolution passed on 3 June 2003 from Zung Zang Trading Sdn Bhd into the name of the plaintiffs in equal shares were undertaken in fraudulent circumstances. Before the said transfer on 3 June 2003, Zung Zang Trading Sdn Bhd held 80,000 shares in Zung Zang Holdings Sdn Bhd and the remaining 20,000 shares were held by the second plaintiff.

[6] The appellate courts unanimously affirmed the decision of the High Court and found that 80,000 shares were fraudulently transferred into the name of the plaintiffs. The plaintiffs' appeal against the orders of the High Court and Court of Appeal was dismissed. The material parts of the orders of the Federal Court are as follows:

(ii) that the shareholdings of the members of ZZ Wood to be restored to the position as at 3-6-2003, that is, before the impugned transfer of shares, and that the shareholding of the members of ZZ Holdings to be restored to the position as at 4-6-2003, that is, before the impugned transfer of shares.

(v) that the register of members of ZZ Wood, ZZ Holdings, ZZ Plantations and Ganright be rectified pursuant to section 162 of the Companies Act 1965 to reflect the above order.

(vi) that in relation to the register of members of ZZ Wood, ZZ Holdings, ZZ Plantations and Ganright, a notice of rectification be lodged.

(Hereinafter referred to as "Federal Court 1 decision").

[7] After the ashes of the said Federal Court 1 decision, the plaintiffs, through their control of the third defendant had allegedly devised a scheme to wind up the company known as ZZ Plantation Sdn Bhd and Ganright Enterprise. These two entities were wound up sometime in January 2016.

[8] The said plaintiffs had then sought to wind up the third defendant on the grounds that it was just and equitable as the relationship between shareholders in a *quasi*-partnership/family company no longer exists. The said application was undertaken through the second defendant. This application was allowed by the High Court on 3 December 2017.

[9] I also note that the said winding-up order is premised on just and equitable grounds. The decision was eventually set aside by the Court of Appeal on 10 October 2019. The Court of Appeal referred to the decision of the Federal Court dated 7 October 2013. I refer to the grounds of the Court of Appeal in the appeal number S-02(NCVC)(A)-68-01-2018. (Hereinafter referred to as Court of Appeal decision).

[10] A further suit was also instituted between the second defendant and the plaintiffs bearing number SDK-22NCVC-31-19-2014 seeking, *inter alia*, the following orders:

(i) an order that the plaintiffs do within four days of the date of service of the order on them deliver or cause to be delivered up to the appellant the register book, minute book, common seal, secretarial files, all the accounting and other statutory records, bank statements, bank-in slips, cheques butts, books, files and agreements of the appellant as may be within the custody, control and/or possession of the respondents and/or their agents and servants;

(ii) an order that that the plaintiffs do within four days of the date of service of the order hand over and surrender to the appellant the possession, custody and control of all moveable properties of the appellant including the trading goods, building materials, stocks in trade and vehicles;

(iii) the plaintiffs whether by themselves or their servants or agents or otherwise howsoever be restrained from trespassing on the business premises of the appellant at Mile 3 1/2, North Road, Sandakan or interfering with and/or meddling in the business operations and affairs of the appellant or holding themselves out as director or officer of the appellant;

(iv) an account of all monies received by the plaintiffs in their former capacity as the directors of the appellants; and

(v) an order for the payment by the plaintiffs to the appellant of all sums found to be due from them to the appellant on the taking of the account under (iv) above.

[11] The above Sandakan High Court suit reached to the Federal Court in the appeal bearing number 02(f)-57-07-2019(S) and the following questions of law was posed:

(i) whether the list of members as reflected in the company's register is conclusive evidence of ownership given the full effect of the Federal Court order dated 7 October 2013;

(ii) whether a corporate representative of a holding company of a wholly-owned subsidiary is entitled in law to requisition an EGM of the subsidiary; and

(iii) whether any resolution passed at such EGM would nonetheless be valid by reasons of ss. 152(A) and 147(6) of the Companies Act 1965.

[12] One of the main issues that was decided by the Federal Court in the above appeal is whether the EGM of the second defendant which passed the following resolutions were valid:

> That Mr Kwan Hiung @ Kwan Huang Cheng be and is hereby appointed as the Company's Corporate Representative pursuant to section 147(3) of the Companies Act and to consent to short notice and to vote at all GM of Zung Zang Holdings Sdn Bhd ...

[13] The Federal Court in the appeal bearing number 02(f)-57-07-2019(S) held that the said resolution to authorise the late Mr Kwan Hiung @ Kwan Huang Cheng ("the late Mr Kwan Huang Cheng") to be valid. The late Mr Kwan Hiung @ Kwan Huang Cheng was found to be the regularly appointed corporate representative of the second defendant and was authorised to act on 80,000 shares held by the second defendant in the third defendant. This included the authority to call for a meeting of the shareholders of the said third defendant and to vote at the said meeting.

(Hereinafter referred to as "Federal Court 2 decision").

[14] Also, it is crucial for this court to lay down the salient chronology of event leading up to this recusal application. The salient chronology of event is produced in Appendix A.

Subject Matter Of The Plaintiffs' Claim

[15] Despite the decisions of the superior courts in the above referred cases, the plaintiffs now claim that:

(i) that the 80,000 shares in the third defendant are owned by the plaintiffs despite the decision by the superior courts declaring that the transfer of the said shares into their names on 3 June 2003 was fraudulently undertaken, *ie*, Federal Court 1, Federal Court 2 and Court of Appeal decision/orders;

(ii) that the first defendant, SSM, had wrongly caused the transfer of the said 80,000 shares into the name of the second defendant;

(iii) that the said transfer of 80,000 shares in the third defendant from the plaintiffs into the second defendant's name was fraudulently undertaken in 2015;

(iv) that the plaintiffs were both unlawfully removed as directors of the company;

(v) that the new directors in the third defendant were unlawfully appointed; and

(vi) that the company secretary of the third defendant was unlawfully appointed.

[16] The plaintiffs claim substantially on the allegation that they are the legitimate owners of the 80,000 shares in the third defendant pursuant to the order of the Federal Court dated 7 October 2013.

[17] This matter was fixed for trial on 21, 22 and 26 August 2024. This court had taken time to read the documents and the pleadings in preparation of the trial of the claim.

[18] After perusing the said documents, this court finds that it is appropriate that the following questions of law be addressed first before the trial proceeds. This is to ensure that the matter is dealt with efficiently and economically. This court had exercised its powers under O. 33 r. 2 of the Rules of Court 2012 to have the following questions of law addressed by counsels by way of written submissions:

(i) whether the 80,000 shares in ZZ Holdings Sdn Bhd should be in the name of the second defendant or the plaintiffs in view of the decision of the Federal Court dated 7 October 2013?

(ii) whether the appointment of the first plaintiff as a director of ZZ Holdings Sdn Bhd is valid in view of the decision of the Federal Court dated 7 October 2013?

(iii) whether the notice issued to remove the first plaintiff as a director of ZZ Holdings Sdn Bhd on 28 November 2021 is valid in law and whether the resolutions passed are correct?

(iv) whether the appointment of the new directors of ZZ Holdings Sdn Bhd made on 6 November 2019 valid?

(v) whether the removal of the previous company secretary and the appointment of the new company secretary on 14 November 2019 is valid?

(vi) to consider the requirements of s. 347 of the Companies Act 2016 and the recent Federal Court decision in *Low Cheng Teik & Ors v. Low Ean Nee* [2024] 9 CLJ 171 concerning the following allegations as they appear in the plaintiffs' statement of claim:

(a) alleged mismanagement of the companies by Michael Kwan leading to the bankruptcy of the second plaintiff;

(b) alleged interference in Kwan Chee Hang Sdn Bhd by Michael Kwan;

(c) complaint filed with the Malaysian Anti-Corruption Commission (MACC) against the second plaintiff by Michael Kwan; and

(d) alleged unlawful interference with the assets of Zung Zang Holdings Sdn Bhd.

[19] It is to be noted that parties were informed that they must provide written submissions on the above issues and they are entitled to address this court as to whether the above issues could be addressed specifically without witnesses in accordance with the principles of law applicable to the exercise of powers under O. 33 r. 2 of the Rules of Court.

[20] In the exercise of the powers provided under O. 33 r. 2 of the Rules of Court, I have considered the following authorities and have exercise my powers in accordance with the principles laid down therein:

(i) *Newacres Sdn Bhd v. Sri Alam Sdn Bhd* [2000] 2 CLJ 833;

(ii) *Messrs KK Lim & Associates lwn. OCBC Bank (Malaysia) Bhd* [2023] 8 CLJ 389;

(iii) *Arab Malaysian Finance Bhd v. Meridien International Credit Corporation Ltd London* [1993] 4 CLJ 307;

(iv) *Hiap Soon Hong Sdn Bhd v. Leopad Assets Sdn Bhd* [2018] CLJU 664; [2018] 1 LNS 664;

(v) *Tilling v. Whiteman* [1980] AC 1;

(vi) *Allen v. Gulf Oil Refining Ltd* [1981] 1 All ER 353;

(vii) *Abdul Mohd Khalid Hj Ali & Ors v. Dato Hj Mustafa Kamal & Anor* [2003] 5 CLJ 85; and

(viii) *Petroleum Nasional Bhd v. Kerajaan Negeri Terengganu & Another appeal* [2003] 4 CLJ 337.

[21] Out of the issues highlighted by this court, I find pressing the issue of law concerning the effect of the judgments of the two Federal Court and the Court of Appeal.

[22] I find that it is suitable for this court to inquire and direct parties to submit what is the impact of the two decisions from Federal Court and whether the superior courts have made a final determination as to who the owner of the 80,000 shares that are now claimed by the plaintiffs is. If the decision of the two Federal Court is final and determinative of the claim, then there will be no need for any witnesses to explain the decision of the Federal Court and parties are at liberty to explain to this court as to effect of the orders of the Federal Courts and the Court of Appeal.

[23] The important question that must be resolved concerns the effect of the decisions of the Federal Court made on 7 October 2013. That is the crux of the plaintiffs' claim. They allege, as it appears in paras. 3 to 7 of their statement of claim that the shares remain in the name of the plaintiffs. I reproduce the relevant parts of the statement of claim:

Pemegangan Saham di dalam ZZH setakat 3/6/2003

3. Dengan kesan pada dan daripada 3/6/2003, ZZT telah memindahmilik ekuiti sejumlah 80% nya di dalam ZZH kepada Plaintif-Plaintif [40% kepada setiap Plaintif] untuk konsiderasi bernilai seperti berikutnya.

Pemegang Saham ZZH	No. Saham	Peratus
Plaintif Pertama	40,000	40%
Plaintif Ke-2	60,000 [20,000 +40,000]	60%
	100,000	100%

Buku Daftar Saham ZZH merekodkan penukaran tersebut.

Antara 2008 - 7/10/2013

4. Satu pertikaian timbul berkaitan, antara lainnya, pegangan saham di dalam ZZH dan syarikat-syarikat yang lain. Pertikaian juga timbul berkaitan dengan struktur pegangan saham dan perhubungan antara KCHSB dan ZZT. Pertikaiannya di antara Plaintif-Plaintif, ZZT dan pelbagai pihak yang lain, di mana protagonist utama di dalam pertikaian dengan Plaintif-Plaintif adalah Michael Kwan.

5. Pelbagai pertikaian yang serius dan berpanjangan telah melalui proses kehakiman Mahkamah Tinggi, Mahkamah Rayuan dan Mahkamah Persekutuan memuncak di dalam perintah muktamad Mahkamah Persekutuan bertarikh 7/10/2013 ("Perintah Muktamad FC") yang menyelesaikan dan membuat perintah-perintah muktamad berkaitan antara lainnya struktur pegangan saham di dalam ZZH dengan menyatakan secara nyata mengenepikan kesemua perintah Mahkamah rendah iaitu 2 Perintah Mahkamah Tinggi bertarikh 30/11/2010 dan 2/12/2010 yang dibuat di dalam Mahkamah Tinggi Sabah & Sarawak di Sandakan Guaman No: S22-24 Tahun 2008 dibagungkan dengan Mahkamah Tinggi Sabah & Sarawak di Sandakan Guaman No: S22-26 Tahun 2008 dan Perintah Mahkamah Rayuan bertarikh 29/3/2012 yang dibuat di dalam Mahkamah Rayuan Rayuan Sivil No: S-02-3404-2010 dan Rayuan Sivil No: S-02-3405-2010.

6. Mahkamah Persekutuan melafazkan Perintah Muktamad FC tersebut di Mahkamah Terbuka dan setelah satu sesi klarifikasi Perintah Muktamad FC tersebut, Mahkamah Persekutuan telah mendengar pihak-pihak secara sepenuhnya di Mahkamah Terbuka dan mengesahkan dan mengekalkan terma-terma Perintah Muktamad FC tersebut.

7. Perintah Muktamad FC tersebut mengekalkan dan mengesahkan secara muktamad bahawa struktur pegangan saham yang sah bagi ZZH adalah seperti struktur yang dikemukakan di Perenggan 3 di atas.

Pemegang Saham ZZH	No. Saham	Peratus
Plaintif Pertama	40,000	40%
Plaintif Ke-2	60,000 [20,000 +40,000]	60%
	100,000	100%

[24] What is important to note that is the 80,000 shares in the said company was transferred into the name of the plaintiffs on the 3 June 2023.

[25] Jeffrey Tan FCJ in *Zung Zang Wood Products Sdn Bhd & Ors v. Kwan Chee Hang Sdn Bhd & Ors* [2014] 2 CLJ 445 made the following orders concerning the issues whether the said shares were validly transferred and who owned the said 80,000 shares:

(ii) that the shareholdings of the members of ZZ Wood to be restored to the position as at 3 June 2003, that is, before the impugned transfers of shares, and that the shareholdings of the members of ZZ Holdings to be restored to the position as at 4 June 2003, that is, before the impugned transfer of shares.

(iii) that all transfers and or allotments of shares in the capital of ZZ Wood on or after 3 June 2003 and in the capital of ZZ Holdings on or after 4 June 2003 do stand cancelled and are of no effect.

(iv) that the shareholdings of the members of ZZ Plantation be restored to the proportion of 80% to ZZ Holdings and that the shareholdings of the members of Granright be restored to the proportion of 85% to ZZ Holdings.

(v) that the register of members of ZZ Wood, ZZ Holdings, ZZ Plantations and Granright be rectified pursuant to s. 162 of the Companies Act 1965 to reflect the above orders.

(vi) that in relation to the register of members of ZZ Wood, ZZ Holdings, ZZ Plantations and Granright, a notice of rectification be lodged.

[26] After the decision of the Federal Court, a suit concerning the affairs of Zung Zang Holdings Sdn Bhd and Zung Zang Trading was also heard at the Court of Appeal that is reported as *Zung Zang Holdings Sdn Bhd v. Zung Zang Trading Sdn Bhd* [2019] CLJU 2272; [2019] 1 LNS 2272 where Vernon Ong JCA (as he then was) held:

> [41] In our view although the Federal Court order did not expressly mention the number of shares held by ZZ Trading in ZZ Holdings which were to be restored, there is no question of doubt that it is the 80% equity held by ZZ Trading in ZZ Holdings before the impugned transfer of shares on 3.6.2003.
>
> [42] We find support of our view in the Judgment of the Court [10], which showed that the Federal Court accepted the finding of the learned trial Judge in two High Court Suits in respect of the fraudulent disposal of ZZ Trading's 80% equity in the capital of ZZ Holdings to themselves. The Federal Court after observing the pleadings and evidence, stated:
>
> > The corporate structure of KCH and its subsidiaries was not intricate. KCH held the entire equity of ZZ Wood [now ZZ Trading]. In turn, ZZ Wood held 80% of the equity of ZZ Holdings. And in turn, ZZ Holdings held 80% of the equity of ZZ Plantation and 85% of the equity of the 6th Appellant (Granright Enterprise Sdn. Bhd. – Granright). The balance of equity of ZZ Holdings, ZZ Plantation and Granright was held by the 4th and 5th Appellants [Matthew and Elaine] ...
>
> [43] Similar observation was repeated by the Federal Court, just before pronouncement of the order:

> Still, we need to correct the orders below ... with respect to suits 24 and 26, ZZ Wood [now ZZ Trading] only owned 80% of the equity of ZZ Holdings, and ZZ Holdings only owned 80% of the equity of ZZ Plantation and 85% of the equity of Granright.

[44] Regard being had to the above, it must follow that the equity of ZZ Trading in ZZ Holdings to be restored to the position before the impugned transfer of the shares is the 80,000 shares held by ZZ Trading in ZZ Holdings before the impugned transfer of shares by Matthew and Elaine on 3.6.2003.

Rectification of ZZ Trading's shareholding in ZZ Holdings

[45] We are unable to agree with the submission of learned counsel for ZZ Holdings that merely because of the date "4th June 2004" mentioned in the Federal Court Order [13], Matthew and Elaine's shareholding in ZZ Holdings were not disturbed by the Federal Court order because based on the register of members of ZZ Holdings "C1", there was no share transaction after 3 June 2003 in respect of ZZ Trading, and it showed that only Matthew and Elaine are the shareholders of ZZ Holdings.

[46] It is pertinent to bear in mind that court never acts in vain. Thus, it is inconceivable that the Federal Court, after accepting the trial court's finding that there was fraudulent transfer of ZZ Trading's 80% equity in ZZ Holdings by Matthew and Elaine to themselves, would allow Matthew and Elaine to remain as shareholders of ZZ Holdings thereby keeping the equity that they had acquired *vide* impugned transfer.

[47] At the risk of repetition, paragraphs (2) and (3) of the Federal Court Order[14] is reproduced with emphasis added:

> (2) that the shareholdings of the members of ZZ Wood [now ZZ Trading] to be restored to the position as at 3.6.2003, that is, before the impugned transfer of shares, and that the shareholdings of the members of ZZ Holdings to be restored to the position as at 4.6.2003, that is, before the impugned transfer of shares.
>
> (3) that all transfers and or allotments of shares in the capital of ZZ Wood on or after 3.6.2003 and in the capital of ZZ Holdings on or after 4.6.2003 do stand cancelled and are of no effect.

[48] In our view, any ambiguity in the Federal Court Order can be resolved by reading the date "4.6.2003" as appeared in the Federal Court order together with the words that follow, which read, "that is, before the impugned transfer of shares" and also in the context of paragraph (3) particularly "do stand cancelled and are no effect". In so doing, there should be no confusion in understanding the Federal Court order, that is, regard being had to the fraud committed by Matthew and Elaine against the affected family companies, it had ordered that the shareholding of the members of ZZ Holdings to be put right in the position it was before the impugned transfer of the shares and that any impugned transfers and allotment of shares in the capital of ZZ Holdings do stand cancelled and are of no effect.

[27] This issue was again taken up by the plaintiffs in another case that went all the way to the Federal Court. In *Zung Zang Trading Sdn Bhd v. Kwan Hung Cheong & Anor* [2021] 5 CLJ 433, Abdul Rahman Sebli FCJ held:

> [61] We are inclined to agree with counsel. First of all, this court's decision of 7 October 2013 was a decision that was favourable to Zung Zang and adverse to the respondents. As we mentioned, the decision was merely to affirm the decision of the Sandakan High Court dated 30 November 2010 which declared KCHSB to be the 100% owner of Zung Zang, and which the Court of Appeal had earlier affirmed on 29 March 2012.
>
> [62] It is therefore imperative for the respondents as the losing party to obey the order which includes, most importantly, an order to rectify the register of members of Zung Zang pursuant to s. 162 of the Companies Act. It must be remembered that the respondents, as they themselves admitted, are still the directors of Zung Zang having full control of the company. It is therefore within their power to effect the rectification.
>
> [63] What the respondents did after this court delivered its decision on 7 October 2013 was to openly defy the order. This has led to a situation where, despite being finally affirmed by this court on 7 October 2013, the decision of the Sandakan High Court given on 30 November 2010 has yet to be complied with by the respondents.
>
> [64] Put another way, the respondents have yet to undo the wrong that they had perpetrated on Zung Zang, which they could easily do by rectifying the register of members of Zung Zang to the position before they fraudulently transferred Zung Zang's shares to themselves in 2003.
>
> [65] The effect of what the respondents have done, or have not done rather, is to defeat the order of this court dated 7 October 2013 and to wipe out the fruits of Zung Zang's litigation in the High Court at Sandakan as affirmed by the Court of Appeal and by this court.
>
> [66] If we were to accede to the respondents' argument that it was Zung Zang's duty to rectify the register, it would mean that despite winning at every stage of the case, Zung Zang will end up as the losing party because the respondents, for reasons best known to themselves, are refusing to rectify the register of members of Zung Zang to give effect to the order of the Sandakan High Court dated 30 November 2010. The fact that the relevant documents are with the Anti Corruption Agency, even if true, is a lame excuse for not making any attempt to rectify the register as ordered by this court.

[28] It is trite that this court is bound by the decisions of these superior courts and is not in any position to make any orders that contradict the decisions of the learned judges of the Court of Appeal and the Federal Court.

[29] Therefore, premised on the above, I find that this is a suitable case for the powers reposed in this court by virtue of O. 33 r. 2 to have the issue of law concerning the effect of the Federal Court orders and the Court of Appeal

to be determined first. The interpretation of the orders of the Federal Court as explained in their judgments need not be clarified through witnesses. Counsels for the litigants are able to explain their effect for this court to decide based on established laws applicable when dealing with the interpretation of the orders and judgments of our courts.

[30] I have also explained to counsels that if they believe that the said issues cannot be resolved through questions of law alone and require further examination of witnesses and other evidence, they are at liberty to do so through their written submissions. Substantial time has been given to parties to address the above issues.

[31] I would like to stress that the most important issue to be addressed is the impact of the decision of the courts as I have highlighted earlier. The determination of this issue will be of great importance as that is the crux of the plaintiffs' case. If the Federal Court and the Court of Appeal have made a final determination on this issue, then the matter will be subject to *res judicata* and cannot be changed or challenged at a subsequent trial unless there is fraud or illegality as suggested in *Badiaddin Mohd Mahidin & Anor v. Arab Malaysian Finance Bhd* [1998] 2 CLJ 75; [1998] 1 MLJ 393.

[32] This court has yet to make any final determination as to the issues of law posed to counsel. I have not made up my mind, and I am duty-bound to hear and consider all arguments put forth by counsel. It is their duty to bring forth to this court their arguments to be considered by this court.

Application For Recusal

The Plaintiffs' Unhappiness/Dissatisfaction

[33] I have given ample time and opportunity for counsels to file their respective written submissions on the above issues. Counsels for the defendants have filed their respective written submissions. The plaintiffs' counsel has refused to do so. Despite the said refusal, I have given additional time for the plaintiffs to file their written submissions on 6 December 2024 beyond the earlier timeline as directed by court.

[34] The grounds for recusal are as follows:

(i) this court did make an order or direction under O. 33 r. 2 of the Rules of Court 2012 directing that the above issues be addressed;

(ii) this court had prejudged the issues in the present case;

(iii) this court failed to allow the stay of the proceedings as requested by the plaintiffs, pending the outcome of encl. 191 to disqualify the second and third defendants' solicitors; and

(iv) this court refusal to agree with the plaintiffs' counsel request on the sequence of hearings of applications filed before this court.

Applicable Law

[35] It is trite law that no judge should be asked to be recused from hearing a dispute unless it is shown that there is a real danger of bias. I refer to the decision of the court in *Mohamed Ezam Mohd Nor & Ors v. Ketua Polis Negara* [2001] 4 CLJ 701; [2002] 1 MLJ 321 and *Residence Hotel And Resorts Sdn Bhd v. Seri Pacific Corp Sdn Bhd* [2014] 10 MLJ 413.

[36] In *Residence Hotel And Resorts Sdn Bhd* (*supra*), the court held:

> Bias is commonly described as leaning, inclination, bent or predisposition towards one side or another or a particular result. It represents a predisposition to decide an issue or course in a certain way in its application to legal proceeding which does not leave the judicial mind perfectly open to conviction. Bias is a condition or state of mind which sways judgment and renders a judicial officer unable to exercise his or her functions impartially in a particular case. *Bias generally refers to the mental attitude or disposition of the judge towards a party-litigant, rather than any views that he or she may entertain regarding the actual subject matter of the dispute* (*R v. Bertham* [1989] OJ No 2123 (QL), *R v. S (RD)* [1997] 3 SCR 484 at para 106). (emphasis added)

[37] I also refer to the judgment of the English Court of Appeal in *Locabail (UK) Ltd v. Bayfield Properties Ltd & Anor* [2000] 1 All ER 65:

> (25) It would be dangerous and futile to attempt to define or list the factors which may or may not give rise to a real danger of bias. Everything will depend on the facts, which may include the nature of the issue to be decided. We cannot, however, conceive of circumstances in which an objection could be soundly based on the religion, ethnic or national origin, gender, age, class, means or sexual orientation of the judge. Nor, at any rate ordinarily, could an objection be soundly based on the judge's social or educational or service or employment background or history, nor that of any member of the judge's family; or previous political associations; or membership of social or sporting or charitable bodies; or Masonic associations; or previous judicial decisions; or extra-curricular utterances (whether in text books, lectures, speeches, articles, interviews, reports or responses to consultation papers); or previous receipt of instructions to act for or against any party, solicitor or advocate engaged in a case before him; or membership of the same Inn, circuit, local Law Society or chambers (*KFTCIC v. Icori Estero SpA* (Court of Appeal of Paris, June 28, 1991, International Arbitration Report Vol 6 # 8 8/91)). By contrast, a real danger of bias might well be thought to arise if there were personal friendship or animosity between the judge and any member of the public involved in the case; or if the judge were closely acquainted with any member of the public involved in the case, particularly if the credibility of that individual could be significant in the decision of the case; or if, in a case where the credibility of any individual were an issue to be decided by the judge, he had in a previous case rejected the evidence of that person in such outspoken terms as to throw doubt on his ability to

> approach such person's evidence with an open mind on any later occasion; or if on any question at issue in the proceedings before him the judge had expressed views, particularly in the course of the hearing, in such extreme and unbalanced terms as to throw doubt on his ability to try the issue with an objective judicial mind (see *Vakauta v. Kelly* [1989] 167 CLR 568); or if, for any other reason, there were real ground for doubting the ability of the judge to ignore extraneous considerations, prejudices and predilections and bring an objective judgment to bear on the issues before him. The mere fact that a judge, earlier in the same case or in a previous case, had commented adversely on a party or witness, or found the evidence of a party or witness to be unreliable, would not without more found a sustainable objection. In most cases, we think, the answer, one way or the other, will be obvious. But if in any case there is real ground for doubt, that doubt should be resolved in favour of recusal. We repeat: every application must be decided on the facts and circumstances of the individual case. The greater the passage of time between the event relied on as showing a danger of bias and the case in which the objection is raised, the weaker (other things being equal) the objection will be.

[38] The mere fact that this court had identified issues of law that should be addressed by the litigants does not mean that I have made up my mind. This court is duty-bound to read the pleadings, documents and consider the applicable laws. The issues identified should then be brought to the attention of counsels for them to suggest solutions or even suggest that these issues be determined after the witnesses are heard and subject to cross-examination. The function of a judge is not like that of monastic monks. We cannot let the proceedings be controlled solely on the whims and fancies of the litigants. We are duty-bound to read the pleadings, the documents, submissions and in some instances highlight issues that should be addressed by counsel. After all those powers have been provided to the court under O. 33 r. 2 of the Rules of Court 2012.

[39] I refer to the decision of the House of Lords in *Ashmore v. Corp Of Lloyd's* [1992] 2 All ER 486 where Lord Templeman stated:

> The parties and particularly their legal advisers in any litigation are under a duty to co-operate with the court by chronological, brief and consistent pleadings which define the issues and leave the judge to draw his own conclusions about the merits when he hears the case. It is the duty of counsel to assist the judge by simplification and concentration and not to advance a multitude of ingenious arguments in the hope that out of ten bad points the judge will be capable of fashioning a winner. In nearly all cases the correct procedure works perfectly well. But there has been a tendency in some cases for legal advisers, pressed by their clients, to make every point conceivable and inconceivable without judgment or discrimination. In *Banque Financiere de la Cite SA v. Westgate Insurance Co Ltd* [1990] 2 All ER 947 at 959, [1991] 2 AC 249 at 280-281 *I warned against proceedings in which all or some of the litigants indulge in over-elaboration causing difficulties to judges at all levels in the achievement of a just result. I also said that*

the appellate court should be reluctant to entertain complaints about a judge who controls the conduct of proceedings and limits the time and scope of evidence and argument. So too, where a judge, for reasons which are not plainly wrong, makes an interlocutory decision or makes a decision in the course of a trial the decision should be respected by the parties and if not respected should be upheld by an appellate court unless the judge was plainly wrong. The Court of Appeal in the instant case did not comment upon and apparently therefore found nothing remarkable in the points of claim or the length of the plaintiffs' opening or in the prospect of protracted oral evidence and interminable submissions based on that oral evidence. *The judge thought he would be assisted by an early deliberation of issues of law, whatever the result of that consideration. He deserved support. In his judgment in the Court of Appeal Ralph Gibson LJ recorded that the plaintiffs had resisted the application to Gatehouse J by Lloyd's for a determination of preliminary issues on many grounds in addition to the two specific grounds of objection to which I have referred. Mr Lyndon-Stanford repeated the arguments in the Court of Appeal and as Ralph Gibson LJ remarked:*

> *He claimed in particular that it was wrong thus to take the conduct of the proceedings out of the hands of the plaintiffs and thereby to disappoint the plaintiffs in their legitimate expectation that the trial would proceed to a conclusion upon the evidence to be adduced.*

Ralph Gibson LJ thought that there was 'considerable force in those submissions'. *My Lords, I disagree; the control of the proceedings rests with the judge and not with the plaintiffs. An expectation that the trial would proceed to a conclusion upon the evidence to be adduced is not a legitimate expectation. The only legitimate expectation of any plaintiff is to receive justice. Justice can only be achieved by assisting the judge and accepting his rulings. I have read and agree with the observations of my noble and learned friend Lord Roskill'.*

(emphasis added)

[40] In the same case Lord Roskill held as follows:

The Court of Appeal appear to have taken the view that the plaintiffs were entitled as of right to have their case tried to conclusion in such manner as they thought fit and if necessary after all the evidence on both sides had been adduced. With great respect, like my noble and learned friend, I emphatically disagree. In the Commercial Court and indeed in any trial court it is the trial judge who has control of the proceedings. It is part of his duty to identify the crucial issues and to see they are tried as expeditiously and as inexpensively as possible. It is the duty of the advisers of the parties to assist the trial judge in carrying out his duty. Litigants are not entitled to the uncontrolled use of a trial judge's time. Other litigants await their turn. Litigants are only entitled to so much of the trial judge's time as is necessary for the proper determination of the relevant issues. That was what Gatehouse J, in my view entirely correctly, sought to achieve by the order which he made, an order which as all your Lordships agree should be restored.

(emphasis added)

[41] The above proposition has been adopted with approval by the Federal Court in *Tan Geok Lan v. La Kuan* [2004] 2 CLJ 301; [2004] 3 MLJ 465 and the Court of Appeal in *Karen Yap Chew Ling v. Binary Group Services Bhd & Another Appeal* [2023] 7 CLJ 534; [2023] 4 MLJ 792.

[42] I also refer to the decision of the Court of Appeal in *Hock Hua Bank (Sabah) Bhd v. Yong Liuk Thin & Ors* [1995] 2 CLJ 900; [1995] 2 MLJ 213 where Gopal Sri Ram JCA held:

> It is part of the function of a judge hearing an application for an injunction to decide whether a serious question requiring trial is disclosed. He therefore does not exceed his proper role in such an interlocutory proceeding by commenting upon the credibility of the evidence or any issue as it lies before him at that stage. And any comments that he may make upon the nature and quality of the evidence or pleadings presented to him at that stage do not and cannot be said to infect his mind with bias.
>
> In my judgment, it is a most serious matter to allege bias against a judge whose sole function is to decide a case according to the evidence before him. I notice an unhealthy trend of late to allege bias too readily against a judicial arbiter on insufficient material. Nothing is capable of eroding public confidence in the judicial arm of the state than unwarranted and unfounded allegations of bias. It is therefore to be avoided at all costs, if necessary, by having resort to the power to punish for contempt.
>
> In my judgment, a judge may, after expressing a view in the course of an interlocutory proceeding, quite properly hear the main action and come to a conclusion diametrically opposite to that expressed at the interlocutory level. Translated to a case such as the present, a judge may grant an interlocutory injunction because he finds a particular line of defence taken to be untenable and yet, after hearing all the evidence and detailed argument at the trial, reach the opposite conclusion and dismiss the suit. I cannot help but think that such an occurrence is commonplace in our courts as it is indeed in other jurisdictions.

[43] The same position can be seen from the judgment of the Australian High Court in *Vakauta v. Kelly* [1989] 87 ALR 633 where the court stated:

> It is inevitable that a judge who sits regularly to hear claims for damages for personal injury will form views about the reliability and impartiality of some medical experts who are frequent witnesses in his or her court. In some cases and notwithstanding the professional detachment of an experienced judge, it will be all but impossible to put such preconceived views entirely to one side in weighing the evidence of a particular medical expert. That does not, however, mean that the judge is disqualified from hearing the particular action or any other action involving that medical expert as a witness. The requirement of the reality and the appearance of impartial justice in the administration of the law by the courts is one which must be observed in the real world of actual litigation.

[44] I am fortunate to have had the opportunity to read the decision of the Singapore Court of Appeal in *BOI v. BOJ* [2018] SGCA 61 that is almost *pari materia* to the facts at hand.

[45] In that case, Andrew Pang JA delivering the judgment of the Singapore Court of Appeal had said the following:

> 3. First, counsel are not the mere "mouthpieces" of their clients. They are not mere automatons, executing every instruction of the client, especially where the client wants each and every point to be taken in order to inflict maximum "damage" on the other party, and where the taking of such points is – in a word – pointless and would not only engender a wastage of the other party's, but also the court's, time and resources. There is a reason why lawyers are also known as "counsel" – in such situations, lawyers must counsel their clients and apprise them of what is permissible and what is not.
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> ...
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> Prejudgment
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> 107 The rule against prejudgment prohibits the decision-maker from reaching a final, conclusive decision before being made aware of all relevant evidence and arguments which the parties wish to put before him or her. The primary objection against prejudgment is the surrender by a decision-making body of its judgment such that it approaches the matter with a closed mind (*Sim Yong Teng* at [50]).
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> 108 While it has been said that prejudgment is distinct from (though related to) apparent bias (see the Singapore High Court decision of *Public Prosecutor v. Chua Siew Wei Kathleen* [2016] 2 SLR 713 ("*Kathleen Chua*") at [24]), the preponderance of authority has referred to prejudgment as something that amounts to apparent bias. Locally, in *Sim Yong Teng*, the appellants' argument on prejudgment or predetermination was characterised as an apparent bias argument (at [47]). This Court agreed (at [63]-[64]) that any reasonable, fairminded and fully informed observer looking at the circumstances of the case would have formed the view that there was prejudgment amounting to apparent bias. In addition, in *Kay Swee Pin v. Singapore Island Country Club* [2008] 2 SLR(R) 802, this Court regarded prejudgment as a form of apparent bias (at [65]).
>
> Prejudgment has also been classified as a form of apprehended bias in most other jurisdictions: see *Johnson*, and in particular [21], where South African Rugby Football Union, Auckland Casino Ltd, *R v. S* (RD) and *Locabail* are cited; see also the recent High Court of Australia decision of *Laurie* (where the High Court found that the reasonable observer would apprehend that the judge might not move from the position expressed in an earlier interlocutory judgment) and the English Court of Appeal decision of *Otkritie International Investment Management Ltd and others v. Urumov* [2014] EWCA Civ 1315 at [1].
>
> ...

110 To this, we would add the following. Judges are obliged to make the effort to prepare for a hearing beforehand and inevitably, provisional views and conclusions would be formed during such preparations: see the decision of this Court in *Prometheus Marine Pte Ltd v. King, Ann Rita and another appeal* [2018] 1 SLR 1 ("*Prometheus*") at [39]. The court in *Prometheus* also noted that an open mind does not mean an empty mind and it is consistent with the judicial function to pose provisional views and concerns to counsel for them to be addressed. Indeed, as the court went on to observe, citing *Re Shankar Alan*, counsel are often assisted by the chance to peek into the judicial mind as they then have the opportunity to persuade the court to come to a different view if they so wish. The same view was expressed in *Johnson* at [13]. The High Court of Australia noted that the reasonableness of any apprehension of bias was to be considered in the context of the exigencies of modern-day practice and the need for active case management. Judges could not be expected to sit mute until the presentation of the parties' cases was over, and prejudgment could not be made out solely because tentative views reflecting a certain tendency of mind were expressed during exchanges with counsel.

Applying The Law To The Facts

[46] After carefully considering the averments by the plaintiffs, I find that there is no reason for this court to recuse itself and not hear this suit. The issues of law identified earlier are only to ensure that questions of laws that arises from the plaintiffs' statement of claim are addressed first before the trial is heard.

[47] I have only attempted to discharge my duties in accordance with what was countenanced by the above judges in the cited cases earlier. I have not made up my mind on the issues posed and parties are at liberty to put forth their arguments and persuade me as to the correct position to take.

[48] I am deeply concerned as to the impact the two Federal Court decisions will have on the merits of this case. I find that this is the most important issue that must first be addressed. That question is a matter solely based on the interpretation of the decision of the Federal Court and could be addressed by counsel in their written submissions.

[49] As I have indicated earlier, I believe that witnesses need not be produced to explain the effect of the decision of the two Federal Court judgments and the decision of Vernon JCA in the Court of Appeal judgment referred to earlier. Premised on the said concern, I believe that this is a suitable case for the powers under O. 33 r. 2 to be exercised to save time, costs and to ensure that the dispute is disposed of efficiently.

[50] Again, I reiterate that I have not made up my mind on the questions posed and I am awaiting the written submissions from the plaintiffs' counsel to enable me to decide on the said issues posed.

[51] On the issue of the stay of proceedings sought by the plaintiffs based on the application to discharge the solicitors for the second and third defendants, I find it would be wrong to grant the said application until the said second and third defendants present their version of events to this court.

[52] I have not made up my mind as to whether a stay of proceedings should be granted. I cannot and should not agree to the plaintiffs' request or application until the said defendants are given the right to be heard. The defendants have a right to explain their position. I cannot presume that the plaintiffs are correct and this applies to all of the litigants.

[53] I must reiterate that the function of a judge is an onerous one. One must sit for hours on end reading pleadings and documents filed as well as at the same time consider the issues that would be applicable to the facts at hand. It is human for a judge to come to a provisional view of the merits of the case, but we are at the constant reminder to have an open mind on the issues to be determined based on what is presented by counsel before us. This can be seen in the judgment of the Singapore Court of Appeal in *Prometheus Marine Pte Ltd v. Anna Rita King* [2017] SGCA 61 where Sundaresh Menon CJ stated:

> [39] Mr Naaidu referred to para 3.1.2 of the Appellant's skeletal arguments and argued that even before the hearing, the Judge had formed impressions about the case. *We found this a wholly untenable point. Because the Judge was not only entitled but obliged to have made the effort to read the papers and come prepared, it was inevitable in that process that provisional views and provisional conclusions might have been formed. This is not at all incompatible with the judicial function. As has often been noted in our courts and elsewhere, an open mind does not mean an empty mind* (see, for instance, *Re Singh Kalpanath* [1992] 1 SLR(R) 595 at [69], *Dean v. Colvin*, 585 F.App'x 904 (7th Cir, 2014) at 905 and *R (on the application of Royal Brompton & Harefield NHS Foundation Trust) v. Joint Committee of Primary Care Trusts and another* [2011] All ER (D) 44 (Nov) at [16]). *Indeed, in such circumstances, it is entirely in keeping with the judicial function to put such provisional views or concerns to counsel for them to be addressed.* It is apposite here to recall what was said by the High Court in a slightly different context in *Re Shankar Alan s/o Anant Kulkarni* [2007] 1 SLR(R) 85 at [114]:
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> > ... in the modern era of complex and often document-intensive litigation, it is not uncommon for judges to take an active part in case management or to intervene as often as they feel they need to in order to understand the issues and the evidence.
> >
> > ... [C]ounsel are often assisted by the court revealing its concerns, its provisional views and its reservations so that the parties have every opportunity to seek to correct or modify them or to persuade the court to come to a different view. In my view, giving counsel the opportunity to peek within the judicial mind considering the case can be a great advantage to counsel and the parties.

A [40] In this light, the argument that the Judge might have formed some initial impressions about the case that were adverse to the Appellant said nothing about the propriety of the Judge's conduct. On the contrary, it would have been a reflection on the case advanced by Mr Naaidu and it was then entirely appropriate for the Judge to put any concerns across to Mr Naaidu. To the extent these could not be addressed, that would B simply mean that Mr Naaidu's arguments lacked merit.

(emphasis added)

[54] I also refer to the decision of the English Court of Appeal in *Bubbles & Wine Limited v. Reshat Lusha* [2018] EWCA Civ 468 where Lord Justice Leggatt held:

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33. Third, it was perfectly proper for the judge to express preliminary views about the strength or weakness of each party's case during the proceedings and no criticism could reasonably have been made of him if his comments had been made in open court. There is nothing wrong with a judge indicating provisional views, and advocates are generally grateful D for such indications as it gives them an opportunity to correct any misconception which the judge may have and to concentrate in their submissions on those points which appear to be influencing the judge's thinking. The expression of such views could only be thought to indicate bias if they are stated in terms which suggest that the judge has already reached a final decision before hearing all the evidence and argument ...

E

[55] I have only acted within the purview of my powers and my duties as a judge of the High Court of Malaya. In identifying the questions to be answered by counsel, I have given them every opportunity to confirm, correct or modify or to persuade this court to come to a different view. This opportunity continues even to this day as I have given the plaintiffs' counsel F additional time, without them asking, to file written submissions to address those issues.

[56] I find that a reasonable person, knowing the applicable law, the pleadings and the history of the suits as well as the previous suits, would have found that there is no real danger of bias. The litigants have been given all G the opportunity to submit and present their case on the issues of law posed by this court. For reasons unknown to this court, the plaintiffs' counsels has chosen not to do so. Nevertheless, this court has allowed them the opportunity to do so, and their submissions must be filed on 6 December 2024.

H **[57]** Furthermore, the actions of the plaintiffs' solicitors appear inconsistent. While their submissions repeatedly emphasise that they were not afforded a fair opportunity to bring this matter to trial, this court's intention has been solely to expedite the proceedings. To that end, the court requested parties to file written submissions addressing the issues under I O. 33. However, rather than complying with this directive, the plaintiffs have yet to file their submission and instead chose, at the eleventh hour, to challenge the appointment of Messrs Fahri Azzat & Co and seek a stay of proceedings.

[58] Based on the plaintiffs' solicitors submission for this recusal application, there are few reasons that can be identified as the importance to my request for O. 33 issues to be submitted. For example, the plaintiffs have challenged the appointment of new directors, new secretary and removal of first plaintiff as director in paras. 31 and 32 of their submission (encl. 235). They assert that if the share transfer is deemed unlawful, these actions must be reversed or set aside. Conversely, if the Federal Court determines that the shares rightfully belong to the defendants, the appointments would be considered valid and *vice versa*. This underscores the importance of resolving the question of law first. Accordingly, this court has provided the parties with the opportunity to present their arguments on these pivotal issues.

[59] The plaintiffs' solicitors' also raised concerns regarding my request for the parties to clarify and provide a chronology of the appointments of directors in ZZ Holdings Sdn Bhd from the year 2000 to the present. This request was made because the statement of claim does not clearly outline this information, and such details could assist the court in gaining a better understanding of the overall scenario. If there are indeed issues surrounding this matter, the plaintiffs could have easily addressed them in their submissions for my consideration.

[60] Besides, the dismissal of the striking-out applications by this court does not preclude me from enforcing O. 33 r. 2 of the Rules of Court. The parties are simply required to submit on the question of law, particularly regarding the implications of the Federal Court's decisions.

[61] The plaintiffs have also questioned my decision to direct the parties to submit on the issue of a derivative action. This decision was prompted by para. 90.13 of the statement of claim, where the plaintiffs seek damages on behalf of the company. It is a trite law that damages by the company can be made through derivative action. Hence, I have asked the parties to argue on this matter.

[62] Therefore, all the issues raised by the plaintiffs pertaining to the merits on question of law can be addressed through the submissions requested. Therefore, I find no special circumstances warranting the plaintiffs' application for a stay of proceedings.

[63] There was no ill-intention, pre-judgement or bias in my request. It was simply aimed at saving time of the court and the parties while ensuring all necessary information is gathered before the matter proceeds further.

Orders Of This Court

[64] For the above reasons, I dismiss the plaintiffs' applications under encls. 210 and 211 with costs.

[65] I find that the costs of these two applications should be paid forthwith as the two applications filed herein are unnecessary and are unreasonable in the circumstances of this case. The plaintiffs should have filed their written

submissions on the issues posed by this court, and this would have resolved the issues in an efficient and expedited manner. These applications to recuse this court and to stay the proceedings are without basis and will only cause unnecessary delay and expense.

[66] I have come to that position guided by the judgment of Shaik Daud Ismail JCA in *Hai Yue Hin v. Public Feedmill (M) Sdn Bhd* [1997] 4 CLJ 555 where he held:

> On our reading of O. 59 r. 4(1) we find that the intention of this rule is as clear as day. The rule itself indicates that the question of costs is left to the discretion of the court and also provides that the court "may, if the court thinks fit require the costs to be paid forthwith". Surely these words must mean what they say. If the court thinks it fit, the court itself would order the costs to be paid forthwith and in the absence of such an order, it should follow the general rule of interlocutory proceedings and the costs should only be paid after the conclusion of the proceedings. This interpretation does not seem to be a novel one, as some thirty years ago Smith J in *Chow Yong Hong v. Chow See Lim & Anor* [1958] CLJU 17; [1958] 1 LNS 17 held that:
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> > The proceedings were purely interlocutory and should follow the general rule of interlocutory proceedings and that the costs should be settled at the end of the action.
>
> In interpreting O. 59 r. 4(1), the operative words must be "may if the judge thinks fit". If the judge finds evidence sufficient to justify an order of costs to be paid forthwith, then if he thinks it fit he would make such an order. For instance in dismissing an application for summary judgment under O. 14, if there is evidence to suggest that the plaintiff, in the opinion of the judge, knew that the defendant relied on a contention which would entitle them to unconditional leave to defend, then the judge could and should in our opinion, order that the costs be paid forthwith. The decision in *Chow Yong Hong v. Chow See Lim & Anor* [1958] CLJU 17; [1958] 1 LNS 17 was adopted by Mohamed Dzaiddin J (as he then was) in *Ko Ko Ma Pony Horse Centre v. Rasa Sayang Beach Hotels (Pg) Bhd* [1989] 1 CLJ 684 (Rep); [1989] 1 CLJ 1019; [1990] 1 MLJ 304 (foll). In dismissing an interlocutory application by the defendant the court ordered cost to the plaintiff without adding the word "forthwith". The learned judge held that where the proceedings were purely interlocutory, the general rule was that costs of the proceedings should be settled at the end of the action. The court further ordered that the costs of interlocutory proceedings should only be made payable forthwith or in any event when the party against whom the order has been made has been guilty of oppressive or unreasonable conduct, or the party has taken unnecessary or improper action.

[67] I find that this is a suitable case for the costs of these two interlocutory applications be paid forthwith by the said plaintiffs to the defendants.